IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 279 OF 1998

The State of Maharashtra ....Appellant.
(Orig.complt.)

V/s

1. Vivek Gangadhar Thakare,
2. Gangadhar Balwant Thakare,
3. Mrs.Muktabai Gangadhar Thakare. .... Respondents.
(Orig.Accd.)

Mr.A.M. Shringarpure, APP for the State.

Mrs.Thorat h/f Mr.R.A. Thorat for the respondents.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

15th July, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of acquittal passed by the learned Additional Sessions Judge, Nashik in Sessions Case No.24 of 1997 on 24.7.1997 the State-appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Public Prosecutor for the State and the learned counsel appearing for respondents-original accused we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution story is that the marriage of deceased Pramila was solemnized

with accused No.1 on 30.4.1996. Accused Nos.2 and 3 are the in-laws of deceased Pramila. It is the allegation that the deceased was abjected to cruelty by accused on account of non-satisfaction of the demands of locket and colour television. On 10.9.1996 the message was received that the deceased was no more. Chandwad police on the basis of information received from accused No.3 about the hanging of the deceased in their house, had been to the house on 10.09.96 and carried out necessary enquiry in connection with accidental death (A.D.) The spot panchnama was drawn, inquest was drawn, dead body was referred to the hospital for post mortem. On the next day i.e. On 11.09.96 at about 2.05 p.m. Father of the deceased by name Pundlik Hari Aher set the prosecution in motion by filing his complaint and on the basis of the complaint and the allegations therein, offence has been registered under Crime No.40/96 under sections 498A, 302 read with section 34 of I.P.C. The investigation was carried out and due investigation it was inferred that the accused committed murder of the deceased due to non-satisfaction of the demands.

4. The prosecution examined as many as 15 witnesses to prove its case that the accused were guilty of cruelty and murder. The learned Sessions Judge on appreciation of this evidence came to the conclusion that the accused persons were not found guilty and therefore proceeded to acquit them. It has come on record that the accused Nos. 2 and 3 were teachers by occupation. Accused No.1 was married to the victim approximately five months prior to the date of incident. We will consider the implication of these accused in the death of Pramila by reappreciating the entire evidence on record. P.W.1-Manik Thore is examined to prove the search panchnama of house of the accused. P.W.2-Vijay Waghmare is examined to prove recovery of keys

from accused Nos. 1 and 2. P.W.3- Pundlik Aher is the complainant father of the victim Pramila. He has deposed that after the marriage one Srikrishna Gangurde was sent to marital home for fetching Pramila for examination and that Srikrishna Gangurde told the witness that the parents in law of the victim threatened and abused him and in his presence also abused Pramila. Thereafter the witness went there but he was abused and threatened and driven out of the house. According to him Pramila who was following him was dragged into marital home by accused No.3 pulling her by heir and the witness then went to him home. He then alleges that Pramila came to the bus stand and they reached the house when Pramila told him that the accused wanted colour television and golden locket of two tolas. The witness claims to have convinced her to be tolerant. According to him after 8 days Pramila went back to the matrimonial home. Then on Raksha Bandhan day one Ambadas Aher was sent to fetch Pramila for Raksha Bandhan. He reported to the witness that he was not allowed to enter the house and then states that on that day Pramila alone came around 4.00 p.m. For Raksha Bandhan. Thereafter Pramila went to Kalyan and then back home. 2/3 days thereafter telephone call was received by one Charoskar whom the victim told that she was being harassed for colour television and gold locket. According to the witness Pramila telephoned from her house. Then again there was phone call which was attended by the wife and on next day message was received regarding illness of Pramila. The witness along with his wife went to the house of the accused, there was crowd around and police had already arrived at the spot. He saw body of his daughter Pramila hanging by neck and it was said around that she has committed suicide. The witness has been cross examined and has denied all the suggestions. It would be seen from the deposition of this witness

that though several complaints of torture of serious nature were made to him by the daughter he did not make any complaint to any person or authority in that regard. P.W.4-Tarabai Aher is the mother of the victim. She repeats the allegations of torture, demand and hearse from all those who had heard Pramila being abused by her in laws. This witness deposes to the telephonic talk she had with Pramila and the complaint made by Pramila on telephone was that she was ill treated by the accused on the reason that she was sent for 2 days and stayed there for 7/8 days. This candid statement by the witness is directly contradictory to the statement made by P.W.3-Pundlik in his deposition regarding this call. According to this witness on 10.9.1996 in the morning around 11.00/11.30 she received a call and she was told on telephone by the victim that the victim was harassed by the accused persons who were rushing upon her and she the victim feared that she would be killed and yet no complaint was lodged with the police authorities nor any attempt was immediately undertaken to save her and bring her back to the parental home. According to the witness accused No.2 came at the spot 5 minutes after the witness reached the spot and saw Pramila hanging by neck. P.W.5-Hirkani Gangurde is also relation of the victim who claims that the victim told her about the harassment. This witness claims that on 10.9.1996 at about 1.45 she called residence of Pramila on phone No.52111, the phone was picked up by accused No.2 who enquired as to who was talking and when asked again he gave telephone to Pramila. The witness talked to her when according to the witness Pramila told him that there was danger to her life. The witness claims that she heard accused No.2 scolding Pramila on phone. She heard accused No.2 on phone abusing Pramila. Then in the evening she heard about her death and came to Chandvad. P.W.6-Bhagwandas

Nihalani runs communication center from where Gangurde P.W.5 made a phone call. P.W.7-Chandrabhan Charaskar is the person employed in telephone department and used to receive calls from Pramila for her father or mother. P.W.8-Srikrishna Gangurde is the person who was sent to bring Pramila for examination. This witness speaks of refusal by the accused to send Pramila for examination as they were of the opinion that by giving examination she will not become a barrister. So according to this witness Pramila was not being sent for examination as according to in-laws she was not going to attain an academic excellence by appearing in the examination. This witness no where mentions of cruelty or any kind for the purposes of dowry. P.W.9-Ambadas Aher had gone to fetch Pramila on Raksha Bandhan day. He claims that parents of Pramila disclosed to him that Pramila was being ill treated for dowry demands. He admits that on Raksha Bandhan day he had gone to fetch Pramila but she was not sent with him. However he was not a witness to any kind of cruelty by the accused to Pramila. P.W.10-Sanjay Ghule states that he saw the accused going on motor bike. His evidence is wholly inconsequential. P.W.11-Rajendra Pawar says that he saw accused No.1 on road around 4.15 p.m. on the day of incident. P.W.12 is Dr.Pramod Bayas who conducted the post mortem on the body of Pramila. This doctor has found during the post mortem that the victim Pramila was pregnant and had been pregnant for 20 weeks prior to the date of autopsy. 20 weeks means approximately 5 months. According to the prosecution the marriage took place on 30.4.1996 and the victim died on 10.9.1996 i.e. after four months and 10 days of marriage. Four months would be 16 weeks and 10 days may be two more weeks i.e. 18 weeks. According to the doctor Pramila was pregnant for 20 weeks.

5. The surprising part to note is none of the witnesses including the parents of Pramila speak a word about her pregnancy and a woman who is five months pregnant appears so even to a necked eye. The fetus was a male baby and the doctor has deposed that the fetus parts were fully developed as per the age of fetus, it weighed 100 gms. and yet none of her relations knew of her pregnancy, nobody deposes to that effect. P.W.13-Surekha Ghamandi states that the accused Nos. 2 and 3 were present in the school where they were teaching till 4.00 p.m. P.W.14-Mahendra Pendharkar is Child Development Officer who held a meeting on 10.9.1996 in the school of teachers and health employees. P.W.15-Prakashsinh Pardeshi is the investigating officer.

6. The learned trial Judge disbelieved these witnesses and acquitted the accused. In our opinion, he rightly did so. It is improbable that a married woman who is pregnant immediately after marriage does not disclose the fact to her parents. In fact she has not disclosed to any body.

7. The prosecution has examined so many witnesses but there is no eye witness to any kind of torture, whether physical or mental.

8. The prosecution itself has proved that atleast on two occasions in five months of marriage victim came home for day or two and stayed there for a week or so. This conduct on the part of the victim itself explains the reluctance of in-laws to send her with anybody to her parental home.

9. The witness has talked so to her parents and they depose a great danger to the life of Pramila yet none of them have chosen to file any complaint before any authority. These circumstances according to us militate against the possibility of victim having been tortured at the hands of the accused persons.

10. We concur with the findings recorded by the learned trial Judge. We have also given our above reasons for holding the story of the prosecution as improbable. In such circumstances, in our opinion, no interference is called for. Appeal fails and is dismissed.